

Before the
Federal Communications Commission
Washington, D.C. 20554

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**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**

In the Matter of)
)
Application by Verizon New England Inc.)
Bell Atlantic Communications, Inc.)
(d/b/a Verizon Long Distance), NYNEX)
Long Distance Company (d/b/a Verizon)
Enterprise Solutions), and Verizon Global)
Networks Inc., for Authorization to Provide)
In-Region, InterLATA Services in Massachusetts)
_____)

CC Docket No. 01-9 /

**COMMENTS OF WORLDCOM, INC. ON THE SUPPLEMENTAL
FILING BY VERIZON FOR AUTHORIZATION TO PROVIDE
IN-REGION, INTERLATA SERVICES IN MASSACHUSETTS**

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INTRODUCTION AND EXECUTIVE SUMMARY

This is a watershed section 271 application. Massachusetts is a major state where key competitors, including WorldCom, have expressed the desire to enter immediately and compete in the residential local market, but where the pricing of the platform of unbundled network elements (“UNE-P”) makes that entry impossible. If this application is granted, this would be the first time the FCC approved BOC long-distance entry in a major state where wholesale prices effectively foreclosed residential competition. As illustrated below, competition is foreclosed because Massachusetts has not adopted proper cost-based rates.

WorldCom’s desire and ability to sell local service to residential customers is reflected in the markets it has entered. In New York, Texas, Pennsylvania, Michigan and Illinois, where the state commissions have done much of the necessary work to set rates at or close to TELRIC, and where the BOCs have complied or are seeking to comply with this Commission’s other market-opening rules, WorldCom has responded by offering local service to the extent possible in the state. Consumers have greatly benefitted from open local markets, but enjoy those benefits only in states where the pricing set for UNEs is cost-based, or at least permits significant entry while state commissions complete the work of bringing rates down to cost so that the entire local market can support sustained competition.

For all the reasons summarized below, there is no reasonable basis upon which the Commission can conclude that Massachusetts is a state in which UNE pricing satisfies the checklist. It should therefore deny this application and require Verizon to adopt cost-based

wholesale prices and open its local market to competition before it is allowed to compete in its in-region long-distance market.

Verizon withdrew its initial Massachusetts application in the face of powerful and un rebutted evidence that Massachusetts' UNE prices are not cost-based and so make broad-based residential competition impossible. When Verizon withdrew its application, the Commission's then-Chairman stated that Verizon "needs to address" these problems with its pricing before it refiles its application "to assure that competitors have meaningful opportunities to compete in local markets."^{1/}

Verizon has chosen not to do so. Instead, Verizon relies on the same unlawful rates in its new application. These rates are much higher than those that the Commission recently approved in Kansas and Oklahoma, and approved half a year earlier in Texas. In particular, the switching rates are effectively double the rates in those other states. They are also double Verizon's own switching rates in Pennsylvania, and more than double the rates in place in Michigan and Illinois, all states in which state commissions have attempted to set rates based on the forward-looking cost of switching. No one believes that all of these states set switching rates that allow their respective BOCs to recover only half of their costs. And no one believes that Verizon-Massachusetts pays twice as much for its switches as SBC, Ameritech, and Verizon-Pennsylvania.

^{1/} Statement of FCC Chairman William E. Kennard on Withdrawal of Verizon 271 Filing, FCC, December 18, 2000.

Verizon still does not seriously dispute any of the documented criticism of its rates. As far as switching costs are concerned, Verizon has only one argument: that the rates are the same as New York, so the Commission has no choice but to accept them. But key factors that persuaded the FCC that the New York commission (“NYPSC”) acted reasonably in New York demonstrate that the Massachusetts commission (“DTE”) set unreasonable rates on a very different record and in a very different context. Thus, a year after it set its rates in 1997, the NYPSC publicly acknowledged that its switching rates were in need of revision, principally because Verizon had misrepresented to it the cost of its switches. The NYPSC therefore opened an investigation to set a rate that more accurately reflected Verizon’s costs. The NYPSC also concluded that the old rates were the best it could calculate with the information it then had available to it, and that they would permit competition to develop in the meantime. The FCC subsequently found that given the conditions present at the time, the NYPSC made a reasonable choice when it set the rates it did in 1997 and promptly began the process of correcting problems with the rates.

The same cannot possibly be said about the DTE’s choice to accept those same rates in October 2000 until it concludes its own recently-opened cost docket. Compelling information unavailable to the NYPSC in 1997 now makes it plain that the rates are double what they should be. While the rates permitted the advent of competition in New York under that state’s unique conditions, they stifle competition in Massachusetts. While the NYPSC actively set about to implement new rates as soon as it learned of the problems with the existing rates, the DTE declined to open a new cost docket, even though the rates in place in Massachusetts until a few

months ago were even double the New York rates – and the New York rates are themselves double the FCC-approved rates in Texas, Kansas and Oklahoma.

Neither should the Commission accept these rates because the DTE has recently opened a pricing docket. Massachusetts apparently has a very different concept of TELRIC than New York, Texas, Pennsylvania, Michigan and Illinois. The DTE's position, restated as recently as November in its reply comments to Verizon's subsequently withdrawn application, is that switching rates four times higher than those adopted in Texas, Kansas and Oklahoma are "TELRIC," and the DTE has offered no explanation why its results are so out-of-line with those of other state commissions. Thus, the "New York" switching rates currently tariffed in Massachusetts will soon be replaced in New York, likely by substantially lower rates that more fairly reflect the true cost of switching. At the same time, the DTE may well increase the "New York" rates in Massachusetts, based on its own particular understanding of "TELRIC" cost principles. We respectfully believe the DTE's understanding of TELRIC is mistaken and the FCC ought to insist on an application of TELRIC principles in accord with leading states where local competition has been able to take hold.

Verizon similarly declines to defend the cost of its loops. By conservative analysis the rates are 30% higher than the true cost of providing the loops. Verizon's sole defense of its rates is that the DTE found them to be cost-based, and that should be conclusive. But Congress vested the FCC with the responsibility of assuring that local markets are open before BOC long-distance entry is permitted. Its job is not simply to make sure that a state commission has checked the appropriate boxes on a form accompanying the BOC's section 271 application. Under these

circumstances, it is unreasonable for Verizon to suggest that its section 271 application in Massachusetts presents the same pricing issues as its earlier application in New York, and that this Commission's New York decision should be relied upon to cut off all discussion and analysis of the Massachusetts rates.

It is not surprising that Verizon so strenuously argues that this Commission should ignore any evidence demonstrating that its UNE prices are substantially higher than the forward-looking cost of its network elements and the rates approved by other state commissions and this Commission. The undisputed fact that Verizon's UNE rates preclude entry by efficient competitors in Massachusetts confirms that these rates are substantially above Verizon's costs because, as the Commission has held, cost-based rates should ordinarily permit competitive entry.^{2/} Consistent with its precedent and the basic purpose of the Act to promote competition, the Commission should decline to accept as the basis for section 271 entry these higher rates that prevent competition when the record provided a reasonable, and indeed far stronger, basis for lower rates that permit competition to flourish. While the effect of pricing rules on any particular competitor and its plans to enter a market is irrelevant under section 271, the effect of pricing on competition in general relates directly to whether prices are cost-based and whether BOC provision of in-region long-distance service is in the public interest. While the Act is not pro-competitor, it is most decidedly pro-competition. Local Competition Order ¶ 618.

^{2/} Competition has failed to develop in Massachusetts because Verizon's UNE rates are too high, not because its residential retail rates are too low. Its retail rates are among the highest in the country, although significantly lower than in New York.

The Commission, in sum, should deny this application and insist on properly calculated cost-based rates that both enable Verizon to recover its forward-looking costs and a reasonable profit and permit consumers to enjoy the benefits of local competition.^{3/}

^{3/} Nor is pricing the only fatal defect in Verizon's renewed application. In direct contravention of FCC and DTE orders, Verizon still has taken no steps to provide loops and UNE-P in a line splitting configuration. Nor has it addressed other problems with its OSS that were identified in response to its earlier application. Finally, WorldCom demonstrates that the public interest would be greatly disserved by a grant here. Not only is Massachusetts' local residential market closed, but Verizon has just recently withdrawn its commitment to maintain its data affiliate, leaving a major gap in the backsliding plan it had proposed.

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B	Joint Declaration of Paul Bobeczko and Vijetha Huffman	Competitive Requirements
C	Joint Declaration of Sherry Lichtenberg and Mindy Chapman	Operations Support Systems
D	Supplemental Declaration of A. Daniel Kelley	Public Interest

TABLE OF CITATION FORMS

FCC Orders	
<u>GTE/Bell Atlantic Order</u>	<u>Application of GTE Corp., Transferrer and Bell Atlantic Corp., Transferee, For Consent to Transfer Control</u> , CC Docket No. 98-184, Memorandum Opinion and Order, 15 F.C.C.R. 14032 (2000).
<u>KS-OK Order</u>	<u>In re Application of SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Kansas and Oklahoma</u> , CC Docket No. 00-217, Memorandum Opinion and Order, FCC 01-29 (rel. Jan. 22, 2001).
<u>LA II Order</u>	<u>In re Application of BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long-distance, Inc., for Provision of In-Region, InterLATA Services in Louisiana</u> , CC Docket No. 98-121, Memorandum Opinion and Order, 13 F.C.C.R. 20599 (1998).
<u>Line Sharing Order</u>	<u>In re of Deployment of Wireline Services Offering Advanced Telecommunications Capability</u> , CC Docket No. 98-147, Third Report and Order, 14 F.C.C.R. 20912 (1999).
<u>Line Sharing Reconsideration Order</u>	<u>In re Deployment of Wireline Services Offering Advanced Telecommunications Capability</u> , CC Docket No. 98-147, Third Report and Order on Reconsideration, FCC 01-26 (rel. Jan. 19, 2001).
<u>Local Competition Order</u>	<u>In re Implementation of the Local Competition Provisions in the Telecommunications Act of 1996</u> , CC Docket Nos. 96-98 & 95-185, First Report and Order, 11 F.C.C.R. 15499 (1996).
<u>MI Order</u>	<u>In re Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in Michigan</u> , CC Docket No. 97-137, Memorandum Opinion and Order, 12 F.C.C.R. 20543 (1997).

FCC Orders	
<u>NY Order</u>	<u>In re Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Services in the State of New York</u> , CC Docket No. 99-295, Memorandum Opinion and Order, 15 F.C.C.R. 3953 (1999), <u>aff'd</u> , <u>AT&T Corp. v. FCC</u> , 220 F.3d 607 (D.C. Cir. 2000).
<u>SC Order</u>	<u>In re Application of BellSouth Corporation, et al. Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in South Carolina</u> , CC Docket No. 97-208, Memorandum Opinion and Order, 13 F.C.C.R. 539 (1997), <u>review denied</u> , <u>BellSouth Corp. v. FCC</u> , 162 F.3d 678 (D.C. Cir. 1998).
<u>TX Order</u>	<u>In re Application by SBC Communications Inc., Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region, InterLATA Services in Texas</u> , CC Docket No. 00-66, Memorandum Opinion and Order, 15 F.C.C.R. 18354 (2000).
<u>USF Report and Order</u>	<u>In re Federal-state Joint Board on Universal Service</u> , CC Docket No. 96-45, Report and Order, 12 F.C.C.R. 8776 (1997).
<u>USF Ninth Report and Order</u>	<u>In re Federal-State Joint Board on Universal Service</u> , CC Docket No. 96-45, Ninth Report and Order and Eighteenth Report on Reconsideration, 14 F.C.C.R. 20432 (1999).
Declarations and Affidavits	
Bobeczko & Huffman Decl.	Joint Declaration of Paul Bobeczko and Vijetha Huffman on Behalf of WorldCom (Tab B hereto)
Bryant Decl.	Declaration of Mark T. Bryant on Behalf of WorldCom (WorldCom 10/16/00 Comments Tab B)
Bryant Reply Decl.	Reply Declaration of Mark T. Bryant on Behalf of WorldCom (WorldCom 11/3/00 Reply Comments as Tab B)
Dowell Supp. Decl.	Supplemental Declaration of George Dowell on Behalf Verizon (Verizon Tab 4)
Frentrup Decl.	Declaration of Chris Frentrup on Behalf of WorldCom (Tab A hereto)
Kelley Decl.	Declaration of A. Daniel Kelley on Behalf of WorldCom (WorldCom 10/16/00 Comments Tab E)

Declarations and Affidavits	
Kelley Supp. Decl.	Supplemental Declaration of A. Daniel Kelley on Behalf of WorldCom (Tab D hereto)
Kwapniewski Decl.	Joint Declaration of Patty Kwapniewski and Sherry Lichtenberg on Behalf of WorldCom, Inc. (WorldCom 10/16/00 Comments Tab D)
Kwapniewski Reply Decl.	Joint Reply Declaration of Patty Kwapniewski and Sherry Lichtenberg on Behalf of WorldCom, Inc. (WorldCom 11/3/00 Reply Comments Tab D)
LaCouture & Rueterholz Decl.	Joint Declaration of Paul A. LaCouture and Virginia P. Rueterholz on Behalf of Verizon (Verizon App. Tab 1)
LaCouture & Rueterholz Supp. Decl.	Joint Supplemental Declaration of Paul A. LaCouture and Virginia P. Rueterholz on Behalf of Verizon (Verizon Supp. Filing Tab 1)
Lichtenberg & Chapman Decl.	Joint Declaration of Sherry Lichtenberg and Mindy Chapman on Behalf of WorldCom Inc. (Tab C hereto)
Proferes Decl.	Joint Declaration of Patricia Proferes, John Nolan, Paul Bobeczko, and Thomas Graham on Behalf of WorldCom Inc. (WorldCom 10/16/00 Comments Tab A)
Taylor Decl.	Declaration of William E. Taylor on Behalf of Verizon (Verizon App. Tab 6)
DOJ Evaluations	
DOJ MA Eval.	Evaluation of the United States Dept. of Justice, <u>In re Application of Verizon New England Inc., et al. to Provide In-Region, InterLATA Services in Massachusetts</u> , CC Docket No. 00-176 (filed Oct. 27, 2000)
Other Record Materials	
<u>DTE DSL Reconsideration Order</u>	<u>Massachusetts DTE 98-57-Phase III-A, Investigation by the Department on its own motion as to the propriety of the rates and charges set forth in M.D.T.E. No. 17, filed with the Department by Verizon New England, Inc. d/b/a Verizon Massachusetts on May 5 and June 14, 2000, to become effective October 2, 2000, Order (DTE Jan. 8, 2001) (Verizon Supp. Filing App. B, Tab 4, Tab C)</u>

Other Record Materials	
<u>DTE PAP Reconsideration Order</u>	<u>Performance Assurance Plan, Massachusetts DTE 99-271, Investigation by the Department upon its own motion pursuant to Section 271 of the Telecommunications Act of 1996 into the Compliance Filing of Verizon New England, Inc. d/b/a Verizon Massachusetts as part of its application to the Federal Communications Commission for entry into the in-region InterLATA (long distance) telephone market, Order on Motions for Clarification and Reconsideration (DTE Nov. 21, 2000) (Verizon Supp. Filing App. B, Tab 4, Tab B)</u>
<u>Order Instituting New Proceeding</u>	<u>In re Joint Complaint of AT&T Communications of New York Inc., et al., Order Denying Motion to Reopen Phase I and Instituting New Proceeding, Case 95-C-0657 et al. (NYPSC Sept. 30, 1998) (VZ-MA App. B, Tab 455, Exh. F)</u>
<u>Rehearing Order</u>	<u>In re Joint Complaint of AT&T Communications of New York Inc. et al., Opinion and Order Concerning Petitions for Rehearing of Opinion No. 97-2, Case 95-C-0657 et al. (NYPSC Sept. 22, 1997) (WorldCom 10/16/00 Comments as Tab E)</u>